IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.5180 OF 2005

Mrs.Saraswati Jagannath Pasalkar, since deceased through her legal heirs and representatives late Jagannath @ Mahadeo Gopal Pasalkar, since deceased through his legal heirs and representatives:

Prakash Jagannath Pasalkar & Ors. : Petitioners

V/s.

Dattatraya Gopal Pasalkar & Ors. : Respondents

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Mr.U.P.Warunjikar for the petitioners.

None present for the respondents.

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CORAM : S.A. BOBDE, J.

August 12, 2005.

P.C.:

1. This is a petition filed by the defendant no.1 against the order below exh.93 dated 26.6.2005 passed by the Civil Judge, Junior Division, Igatpuri. By the impugned order, the learned Civil Judge, Junior Division, has permitted the defendant no.2 to cross-examine the petitioner, who is

the co-defendant i.e. the defendant no.1.

2. Mr.Warunjikar, the learned counsel for the petitioners, submitted that the defendant no.2 has been joined as a formal party as is evident from the plaint itself. Therefore, the defendant no.2 is not an adverse party who is entitled to cross-examine the petitioner.

3. It appears from the order that the trial Court has permitted cross-examination of the petitioner by the defendant no.2 because the petitioner is said to have made certain statements adverse to the interests of the defendant no.2. I see no reason to interfere with the impugned order since, undoubtedly, the trial Court will ensure that the defendant no.2 is allowed to ask only such questions in cross-examination pertaining to such statements made by the petitioner which are adverse to the defendant no.2. What these questions will be cannot be imagined or assumed at this stage.

4. With the aforesaid observations, the petition is dismissed.

S.A. BOBDE, J.